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KERALA GAZETTE

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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 8348-b.2|61|Law.

Dated, Trivandrum, 22nd September 1961|31st Bhadra 1883.

In pursuance of the adoption of a motion by the Lok Sabha on the 18th August, 1961, that the Constitution (Amendment) Bill, 1961 introduced by Shri C. R. Pattabhi Raman, M. P., be circulated for the purpose of eliciting public opinion thereon by 31-10-1961, the said Bill is hereby published for general information along with the Statement of Objects and Reasons.

Any person or public body, desiring to express any opinion on the provisions of the Bill, may forward three copies of such opinion in English to the Secretary to Government, Law Department, Trivandrum on or before 30th day of October, 1961 for transmission to the Lok Sabha Secretariat.

Any opinion on the Bill which is sent direct to the Lok Sabha Secretariat or to any Ministry of the Government of India will not be accepted.

By order of the Governor,
P. UNNIKRISHNA KURUP,
Additional Law Secretary.

Bill No. 9 of 1961

THE CONSTITUTION (AMENDMENT) BILL, 1961

(AS INTRODUCED IN LOK SABHA)

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Constitution (Amendment) Act, 1961.

2. *Amendment of Article 226.*—In Article 226 of the Constitution, in clause (1), the following proviso shall be added at the end, namely:—

"Provided that nothing in this article shall be deemed to preclude a High Court within whose jurisdiction any cause of action arises from issuing to the Government of India any such direction, order or writ merely on the ground that the seat of that Government is not within the territories in relation to which the High Court exercises jurisdiction".

STATEMENT OF OBJECTS AND REASONS

Under several decisions of the Supreme Court, it has been held that any High Court other than the High Court of Punjab cannot issue any direction order or writ under Article 226 of the Constitution to the Government of India because the seat of the Government of India is not located within the jurisdiction of that High Court. This causes unnecessary hardship to various persons to proceed against the Government of India under that article, even if they have a just grievance. The Law Commission has recommended the removal of this anomaly. Hence this Bill.

NEW DELHI, C. R. PATTABHI RAMAN.

The 24th February, 1961.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

* * * * * *

226. *Power of High Courts to issue certain writs.*— (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 9201-b.2|61|Law.

Dated, Trivandrum, 30th September, 1961|8th Aswina, 1883.

In pursuance of the adoption of a motion by the Lok Sabba on the 1st September, 1961, that the Constitution (Amendment) Bill, 1961 introduced by Shri C. R. Narasimhan, M.P., be circulated for the purpose of eliciting public opinion thereon the said Bill is hereby published for general information along with the Statement of Objects and Reasons.

Any person or public body desiring to express any opinion on the provisions of the Bill may forward 3 copies of such opinion in English to the Secretary to Government, Law Department, Trivandrum on or before the 30th day of October, 1961, for transmission to the Lok Sabha Secretariat.

Any opinion on the Bill which is sent direct to the Lok Sabha Secretariat or to any Ministry of the Government of India will not be accepted.

By order of the Governor,

P. SANKARAN ELAYATH,
Law Secretary.

Bill No. 24 of 1961

THE CONSTITUTION (AMENDMENT) BILL, 1961

(AS INTRODUCED IN LOK SABHA)

A

BILL

further to amend the Constitution of India

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Constitution (Amendment) Act, 1961.

2. *Amendment of Article 226.*—In Article 226 of the Constitution, in clause (1) the following proviso shall be added at the end and shall be deemed always to have been added, namely:—

"Provided that nothing herein contained shall be deemed as excluding the jurisdiction of the High Court of any State in respect of any order passed by any authority inside the State, whether such order has been dealt with in appeal or revision by any authority outside the State or not"

STATEMENT OF OBJECTS AND REASONS

Judicial interpretations have differed as to the place where an application under Article 226 of the Constitution should be filed. The Madras High Court (Collector of Customs *Vs.* Abdul Rahiman A.I.R. 1957 Madras 496) has held that this jurisdiction belongs only to the Court within whose territory the appellate or revisional authority has its office, if appeal or revision has been filed. The Calcutta High Court, on the other hand, has held (East India Commercial Ltd., *Vs.* Collector of Customs and another reported in A.I.R. 1960, Calcutta at page 1) that the application can be laid wherever the original authority is situate.

In this state of uncertainty, there has been a large influx of petitions under Article 226 of the Constitution to the East Punjab High Court. Thus the remedy provided by this Article has become expensive and is fraught with delay. If an aggrieved party does not prefer an appeal as provided in the statute, the application under Article 226 is liable to be dismissed *in limine* by the High Court on the ground that all the remedies prescribed by the law have not been exhausted whereas if the party does file an appeal and it is dismissed, he is obliged to file the application under Article 226 only in the East Punjab High Court having territorial jurisdiction over Delhi. The Lawyers' Conferences held in December 1959 in Patna and in Nagercoil in April 1960 both passed resolutions that suitable legislation should be enacted to remedy the situation.

The Law Commission also addressed itself to this matter and observed in paragraph 17 of its 14th report as follows:—

"High Courts other than the High Court of the Punjab have found themselves unable to exercise jurisdiction under Article 226, when the statutory authority or official concerned has headquarters in Delhi. This tends to defeat the very purpose of the jurisdiction conferred by Article 226 which is to enable a person to seek a remedy under that article in respect of acts done in violation of his rights within the State by an application to the High Court of his own State.

A later decision of the Supreme Court seems to have modified the earlier view but the matter is by no means clear.

In our view, this hardship imposed upon a person seeking relief needs removal".

The present Bill proposes an amendment which will serve the purpose. In order to cover pending cases it provides that the amendment be deemed as operative from the date of commencement of the Constitution.

NEW DELHI; C. R. NARASIMHAN

The 14th March, 1961.

M. N. KAUL,
Secretary.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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226. *Power of High Courts to issue certain writs.*—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

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